

ENTERED

October 03, 2016

David J. Bradley, Clerk

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

UNITED STATES OF AMERICA	§	
	§	CRIMINAL ACTION H-13-135-2
v.	§	
	§	CIVIL ACTION H-16-1611
RAFAEL ARMANDO GARCIA	§	

MEMORANDUM OPINION AND ORDER

Defendant filed a *pro se* motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence (Docket Entries No. 150, 153). The Court stayed the case pending issuance of mandate by the Fifth Circuit Court of Appeals in *United States v. Gonzalez-Longoria*, No. 15-40041. Mandate issued in *Gonzalez-Longoria* on August 5, 2016.


The Government has filed a motion to lift the stay and dismiss the section 2255 motion (Docket Entry No. 163). Under Rule 4(b) of the Rules Governing Section 2255 Proceedings for the United States District Courts, the Court may dismiss a section 2255 motion without a response where “it plainly appears from the motion, any attached exhibits, and the record of prior proceedings that the moving party is not entitled to relief.”

In his section 2255 motion, defendant argues that the definition of “crime of violence” under section 924(c)(3)(b) is unconstitutionally vague in light of *Johnson v. United States*, 135 S. Ct. 2551 (2015). But *Gonzalez-Longoria* now forecloses that argument, in that the Fifth Circuit held that 18 U.S.C. § 16(b) – which defines “crime of violence” the same as in section 924(c)(3)(b) – “is not unconstitutionally vague.” *Gonzalez-Longoria*, 2016 WL

4169127, at *1. Consequently, it plainly appears to the Court that defendant is not entitled to relief, and his section 2255 motion will be denied and dismissed with prejudice.

The Government's motion to lift the stay and dismiss the section 2255 motion (Docket Entry No. 163) is GRANTED. Defendant's section 2255 motion (Docket Entries No. 150, 153) is DENIED and DISMISSED WITH PREJUDICE. A certificate of appealability is DENIED.

Signed at Houston, Texas on October 3, 2016.



Gray H. Miller
United States District Judge